No. 682

In the Supreme Court of the United States

OCTOBER TERM, 1946

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, APPELLANT

v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

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In Compliance with Rule 12 of the Supreme Court of the United States, as amended, the plaintiff herein submits his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the decision of the District Court entered in this cause on August 30, 1946. The application for appeal was filed on September 2, 1946, and is presented to the District Court herewith, to wit, on the 2d day of September, 1946.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349 (a). See *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *Bowles* v. *Willingham*, 321 U. S. 503.

STATUTES AND REGULATIONS INVOLVED

1. The pertinent portions of the Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. App. Supp. V, 901 et seq., provide as follows:

> SECTION 2 (d). Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regula-

tion or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

SECTION 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SECTION 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will con-

stitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

2. The pertinent portions of the Price Control Extension Act of July 25, 1946, Pub. Law No. 548, 79th Cong. 2d Sess., Chapter 671, provide as follows:

SECTION 1. Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 (b) of the Emergency Price Control Act of 1942, as amended, is amended by striking out "June 30, 1946" and substituting "June 30, 1947."

SECTION 18. (1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended (except regulations or requirements under section 2 (e) thereof relating to meat, flour, or coffee), and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent

as if this Act has been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act has been enacted on June 30, 1946: Provided, That in any case in which the Emergency Price Control Act of 1942, as amended (except sections 204 and 205), or the Stabilization Act of 1942, as amended (except sections 8 and 9), or any regulation, order, or requirement under either of such Acts, prescribes any period of time within which any act is required or permitted to be done, and such period had commenced but had not expired on June 30, 1946, such period is hereby extended for a number of days equal to the number of days from July 1, 1946, to the date of enactment of this Act, both inclusive: Provided further, That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: Provided further, That insofar as the provisions of this Act require

the Administrator to make any change in any maximum price, such provisions shall not be deemed to require such change to be made before the thirtieth day following the date of enactment of this Act.

3. The pertinent portions of the Rent Regulation for Housing (8 F. R. 7322: 10 F. R. 11666; 11 F. R. 5824, 8106) provide as follows:

SECTION 6. *Removal of tenant*—(a) Restrictions on removal of tenant. So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, * * * (here follow a number of specific exceptions not pertinent here).

(b) *Administrator's certificate*—(1) Removals not inconsistent with Act or regulation. No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord

may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date or filing of the petition unless the Area Rent Director has determined that a three months' period is adequate for the purposes of the Act in the particular area in issuing certificates under section 6 (b) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the Act.

Subsection (b) (2) provides for the issuance of a certificate for occupancy by a purchaser, and subsection (b) (3) provides for the issuance of a certificate for occupancy by a purchaser of stock in a cooperative. Subsection (c) provides other exceptions not here relevant.

(d) *Notices required*—(1) Notices prior to action to remove tenant. Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant and the facts necessary to establish the existence of such ground. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought, the facts necessary to establish the existence of such ground and specifying the time when the tenant is required to surrender possession: Provided, however, That the requirement of this sentence shall not apply to housing accommodations within the City of Baltimore, Maryland, the

Northeastern New Jersey Defense-Rental Area, or the Trenton Defense-Rental Area, when the ground for the removal or eviction of a tenant is non-payment of rent.

If judgment for possession is sought by virtue of a confession of judgment or a warrant of attorney authorizing confession of such judgment against the tenant, the date of commencement of the action as referred to in this section shall be deemed to be the date of the filing in court of the first papers in the proceedings for the entry of such judgment.

Where the ground for removal or eviction of a tenant is non-payment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply if the eviction is pursuant to a certificate issued by the Administrator under the provisions of paragraph (b) of this section.

(2) Notice at time of commencing action to remove tenant. At the time of commencing any action to remove or evict a tenant, including an action based upon non-payment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground

under this section on which removal or eviction is sought.

(e) Local Law. No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

SCHEDULE A—DEFENSE-RENTAL AREAS

Name of defense-rental area	State	County or counties in defense-rental area under Rent Regulation for Housing	Maximum rent date	Effective date of regulation	Date by which registration statement to be filed (inclusive)
(316)	Fort Worth, Tex.	Tarrant	3 1-42	(1)	12-16-42

[1] Sections 1, 6, 13, Oct. 15, 1942; remaining sections, Nov. 1, 1942.

THE ISSUES AND RULING BELOW

The Emergency Price Control Act of 1942 expired June 30, 1946, and on July 25, 1946, was reenacted and extended to June 30, 1947, by the Price Control Extension Act of 1946. Section 18 of the latter Act provided among other things that (1) the Act was to take effect as of June 30, 1946, and all regulations under the Emergency Price Control Act (with certain exceptions not including the Rent Regulation for Housing) which were in effect on June 30, 1946, were to be in effect in the same manner and to the same extent as if the 1946 Act had been enacted on June 30, 1946, and (2) no transaction, act, or failure to act occurring between June 30, 1946, and July 25, 1946, was to be deemed a violation of

the Emergency Price Control Act or of any regulation thereunder. Section 6 of the Rent Regulation for Housing, both prior to and after July 25, 1946, prohibited—with certain exceptions not material here—eviction from housing accommodations of tenants who continued to pay the rent.

The First Amended Complaint, filed by the Price Administrator in the United States District Court for the Northern District of Texas, Fort Worth Division, alleged (and this was nowhere denied by defendants) that the defendants had proceeded with eviction suits in the Justice of the Peace court in Precinct No. 1, Tarrant County, Texas, without coming within one of the stated exceptions in the Regulation, and without giving the notices required by Section 6 thereof, and hence an injunction should issue under Sections 205 (a) and (c) of the Emergency Price Control Act to restrain such evictions. The portion of the judgment giving rise to the constitutional adjudication sought to be reviewed is the denial of a temporary injunction against the defendant landlords, Page, Hughes and Chandler on the ground that they had obtained judgments of eviction prior to July 25, and as applied to such judgments the Price Control Extension Act of 1946 and the Regulation were invalid.

The various procedural steps in the proceeding were as follows:

On August 5, 1946, there was a hearing of plaintiff's motion for a preliminary injunction in the federal district court action against Gus Brown, Justice of the Peace for Precinct No. 1, Tarrant County, Texas, Dusty Rhodes, Sheriff of Tarrant County, Texas, and Sully Montgomery, Constable for Precinct No. 1, Tarrant County, Texas, to restrain them from evicting certain tenants in the Fort Worth Defense-Rental Area whose landlords had prosecuted or were prosecuting eviction actions against them in the Court of Gus Brown. The court announced that the landlords involved would be proper parties to the suit, and continued the hearing until August 7. On that date, the plaintiff filed, with leave of court, its First Amended Complaint and Motion for Preliminary Injunction. The First Amended Complaint prayed for a temporary restraining order and a preliminary and final injunction against the aforesaid Gus Brown, Dusty Rhodes and Sully Montgomery, and against the various named landlords who were alleged to have prosecuted eviction actions in the Court of Gus Brown without complying with the provisions of Section 6 of the Rent Regulation for Housing. The Motion for Preliminary Injunction requested a preliminary injunction against the defendants named in the Amended Complaint, restraining them from further prosecution, or trial, or issuing or procuring the issuance of any writ of restitution until

the provisions of the Rent Regulation for Housing had been complied with, or from issuing any process to enforce any judgment or from issuing or enforcing any writ of restitution in any of the Justice Court proceedings listed.

A temporary restraining order was issued on August 7, 1946, and hearing was set for August 23, 1946. On the latter date Mrs. Sophia Chandler, a plaintiff in two additional eviction suits in Gus Brown's Court, who had not been named as a defendant, was permitted to intervene. On consent of plaintiff's counsel, Justice of the Peace Gus Brown was dismissed from the suit. After hearing argument of counsel, the court ruled on August 30, 1946: (1) that an injunction should issue against certain defendants who had instituted eviction proveedings between June 30 and July 25, 1946, but had not obtained judgment during that period; (2) that the action should be dismissed as to certain defendants whom the court found had either complied with the Regulation or dismissed their eviction proceedings; (3) that the action should be dismissed as to Dusty Rhodes and Sully Montgomery, Sheriff and Constable, respectively, on the ground of a "comity" which the judge thought had been written into law by Section 265 of the Judicial Code (Typewritten Transcript, 34); (4) that the injunction should be denied as to three landlords who in four suits obtained judgments of eviction prior to July 25,

1946, the court stating: "The Court concludes that as to all of said above mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent Regulation for Housing are invalid, and the Court concludes that a judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the state laws of Texas should be respected, and that the court will not issue an injunction."[1] Further indication that the court was ruling on the constitutionality of the statute as well as the regulation may be found in the Transcript.[2]

THE QUESTIONS ARE SUBSTANTIAL

1. The holding that the provisions of the Price Control Extension Act of 1946 which render vio-

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[1] The court's reasoning appears in the Typewritten Transcript, pp. 35–36:

"* * * But, aside from these penal provisions, and whether it comes under the provision of the Constitution, in reference to expost facto law, it is the view of the court that when a man takes a judgment of the court, that was lawful at the time, it becomes a vested right, just as much so as if he had taken a deed of conveyance that was lawful at the time.

"Therefore, all judgments that were rendered, and become final before a new law on the OPA was enacted, this court is inclined to respect, and to treat them as vested rights, and as not coming directly under the Constitutional inhibitions of expost facto law, because of the penal provision of the Statute."

[2] Pp. 36–37:

"Mr. Gruber. Are you ruling, Your Honor, in connection with this, landlords who had obtained judgments before July 25, that the regulation is invalid, which prevents such evic-

lative the enforcement of a judgment of eviction obtained before the enactment of that Act constitute an invalid interference with vested rights, is in conflict with the decisions of other courts. *Porter* v. *Mund, et al.*, S. D. Ohio, August 21, 1946; *Porter* v. *Ayers*, M. D. Tenn., August 2, 1946; *Porter* v. *Noer*, S. D. Ohio, August 16, 1946; *Porter* v. *Repar, et al.*, N. D. Ohio, August 19, 1946; *Porter* v. *Riley*, D. Me., September 10, 1946, all as yet unreported; cf. *Porter* v. *Merhar* (C. C. A. 6th, August 6, 1946).[3]

This decision likewise conflicts with decisions of the Supreme Court which hold that rights acquired by a party pursuant to a state court judgment may be divested when sufficiently strong considerations of federal policy are present. See *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, in which an Act of Congress altered the terms of the period allowed for redemption in a judgment of foreclosure of a mortgage. This Court

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tion, or the Emergency Price Control Act itself is invalid?

"The Court. Yes, I ruled as to those suits, that that provision that undertook to have included those cases, by having its provision made retroactive in there, is not valid.

"Mr. Gruber. That the Act itself is invalid?

"The Court. That it is invalid as to those suits.

"Mr. Gruber. You are not ruling, then, just to the regulation?

"The Court. No."

[3] The District Court refused to issue a preliminary injunction; Judge Miller of the Circuit Court of Appeals then granted an injunction ordering the landlord to restore possession to the evicted tenant, pending the appeal.

has held similarly in cases where the state legislature was qualifying the effect of judgments of its own courts, or Congress was doing the same with respect to federal courts. See *Missouri & Arkansas L. & M. Co.* v. *Greenwood District*, 249 U. S. 170, in which it was held that a state might constitutionally reduce the rate of interest prescribed in a judgment, after the judgment had been rendered; *Carpenter* v. *Wabash Railway Co.*; 309 U. S. 23, in which a statutory amendment changing the priorities of claims in railroad equity receiverships was upheld and applied so as to reverse the judgment in a case which at the time of the change was pending on certiorari before the Supreme Court, and wherein that Court assumed that the judgment below was correct when rendered; (cf. *Paramino Lumber Co.* v. *Marshall*, 309 U. S. 370, in which a private Act of Congress reopened a compensation case in which an award had already been made). The same has been held as to "vested" rights arising from contract, which are likewise subject to the power of Congress or the States to abrogate where the public welfare so demands. "And contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress." *Guaranty Trust Co.* v. *Henwood*, 307 U. S. 247, 258; see also *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Milliken* v. *United States*,

283 U. S. 15, 23; *Norman* v. *Baltimore & Ohio R. R.*, 294 U. S. 240; *Home Building & Loan Assoc.* v. *Blaisdell*, 290 U. S. 398. And in *Taylor* v. *Brown*, 137 F. 2d 654, certiorari denied, 320 U. S. 787, the Emergency Price Control Act itself, as applied to pre-existing leases, was upheld over the contention that its invalidly abrogated vested contractual rights. No substantial distinction can be drawn in this connection between vested contractual rights and rights based on a judgment.

It is noteworthy that whatever vested rights may have accrued under the judgments of eviction involved in the instant case were acquired at a time when the parties thereto—along with the entire nation—had knowledge of the imminent possibility of a price control extension act, and virtual certainty of the extension of rent control. Hence they can hardly say that they acquired these rights in reliance on the continued absence of rent control. Lack of such reliance has frequently been held to be a ground for sustaining legislation which operated adversely upon rights previously acquired. Cf. *Welch* v. *Henry*, 305 U. S. 134, 147; *Chase Securities* v. *Donaldson*, 325 U. S. 304, 316; Stone, Brandeis and Holmes, JJ., concurring in *Untermyer* v. *Anderson*, 276 U. S. 440, 446–7; see Stimson, Retroactive Operation of Law—A

Problem in Constitutional Law, 38 Mich. L. Rev., 30, 39.[4]

2. The issue is an extremely important one. A large number of similar cases are pending; and the demoralizing and dislocating effect upon many communities which a flood of evictions would have, is apparent.[5]

3. This appeal is from such portion of the judgment of the District Court as dismisses the suit against Dusty Rhodes, Sheriff, Sully Montgomery, Constable, and Frankie Mae Page, J. W. and Mrs. J. W. Hughes, and Mrs. Sophia Chandler. If this appeal is granted, the Administrator

[4] Nor can it be argued that the Price Control Extension Act was intended to permit one who obtained a judgment of eviction before July 25, 1946, to enforce it after that date, and that hence the court below has misconstrued the statute. In addition to the plain language of Section 18, continuing in effect the prohibitions against eviction in the Regulation and stating the Act was to be considered as though having been passed without an interim period, an administrative interpretation was issued contemporaneously with the enactment of the statute which expressly covers the situation involved in this case and described defendants' conduct as a violation. See Interpretation 6–VI, *infra*, pp. 29–31.

[5] The decision in the instant case would also serve to render invalid the Price Control Extension Act of 1946 in so far as (through the operation of Section 18, supra, and its reenactment of Section 4 of the Emergency Price Control Act, supra) it forbids delivery at overceiling prices after July 25, 1946, where the sale has been made before that date. The typical price regulation prohibits sales or deliveries at overceiling prices; the sale and delivery are separate violations. See *Schreffler* v. *Bowles*, 153 F. 2d 1 (C. C. A. 10th), certiorari denied June 10, 1946, No. 1124, October Term, 1945.

intends to contest, in addition to the constitutional issue raised, the question of the correctness of the court's decision that under Section 265 of the Judicial Code is could not enjoin state officials from executing eviction judgments rendered contrary to federal law. See *Bowles* v. *Willingham*, 321 U. S. 503; *Porter* v. *Dicken*, May 27, 1946, No. 1118, October Term 1946;[6] *Brown* v. *Wright*, 137 F. 2d 489 (C. C. A. 4th), and *Bowles* v. *Hall*, 63 F. Supp. 826 (W. D. Pa.), in all of which the injunction under the Emergency Price Control Act ran against the landlord and the sheriff; and also *Porter* v. *Lee*, May 27, 1946, No. 1117, October Term, 1945, and *Brown* v. *Wick & Campbell*, 48 F. Supp. 887, in which it ran against the landlord and justice of the peace.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,
Office of Price Administration.

Filed, September ——, 1946.

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[6] In this case Mr. Justice Reed issued the requested injunction pending the outcome of certiorari proceedings; the opinion of this Court approving the injunction does not discuss the propriety of enjoining defendants who were not landlords; nor do the cases above cited discuss the point.

In the District Court of the United States for the Northern District of Texas, Fort Worth Division

Civil Action No. 1180

PAUL A. PORTER, ADMINISTRATOR OFFICE OF PRICE ADMINISTRATION, COMPLAINANT

v.

GUS BROWN; *et al.*, DEFENDANTS

JUDGMENT

On this Fifth Day of August 1946 came on for hearing before the Court at Dallas, Texas the Complainant's Motion for Preliminary Injunction against Gus Brown, Justice of the Peace, Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, all of Tarrant County, Texas, and the Complainant appeared by attorneys W. S. Margowski, Lowell D. Gibbons, and Louis C. Ross, and the Defendant Gus Brown appeared by attorney J. L. Winters and Doss Hardin, and Walter J. Donnelly, landlord in one of the eviction suits, through his attorney Lloyd Price asked and was granted leave to intervene in this suit in connection with the eviction suit of *Walter J. Donnelly* vs. *W. P. Lindsey* No. 11477 pending in Gus Brown's Court, and the Court, after hearing the pleadings read and the evidence and argument of counsel, the Court announced that the landlords would be proper parties to the suit and continued the hearing on the Motion for Pre-

liminary Injunction and reset the hearing at Fort Worth, Texas on August 7, 1946 and that at the hearing on August 7, 1946 at Fort Worth, Texas the same parties appeared in person and by attorneys but the Complainant was further represented by Irving Gruber, Chief General Litigation Attorney from Washington, D. C., and at this hearing the Complainant asked and was granted leave of Court to file an amended Complaint and an amended Motion for Preliminary Injunction in which the defendant-landlords in said eviction suits had been made parties, and upon request of counsel the hearing on said Motion for Preliminary Injunction was reset by the Court at Fort Worth, Texas on August 23, 1946, and it further appeared to the Court at the hearing at Fort Worth on August 23, 1946 that some of the parties had accepted service of the amended Motion for Preliminary injunction and notice of said hearing in Open Court, and it further appeared to the Court that the Defendant-landlords had been served with process and a copy of the amended Motion setting the hearing on the amended Motion for Preliminary Injunction at Fort Worth on August 23, 1946 and at this hearing before the Court on August 23, 1946, the Complainant appeared by attorneys Irving Gruber, W. S. Margowski, and Louis C. Ross, and the defendant Walter J. Donnelly appeared by attorney Lloyd Price and the defendants Mrs.

Morrow, Mrs. O. O. Black, and Mrs. J. E. Brooks appeared by attorney Frank Graves, and the Defendant F. A. Bailey appeared by attorney Hal S. Lattimore, and the defendants J. C. Malone and Anna Billings appeared by attorney Dave Miller, and the defendant J. A. Shellberg appeared by attorney WArd Bailey, and the defendant Mrs. Frankie Mae Page appeared by attorney Frank Crumley and the defendant Mrs. Maude Gregory appeared by attorney Joseph Orr, and E. L. Gilbert, attorney, appeared for Mrs. Sophia Chandler, and asked and was granted leave to intervene for and on behalf of Mrs. Sophia Chandler in connection with two eviction suits in Gus Brown's Court as follows:

No. 11392—*Mrs. Sophia Chandler* vs. *Nora Gorell.*

No. 11406—*Mrs. Sophia Chandler* vs. *Mrs. Pattie Little.*

That Complainant announced to the Court that it would not further urge its Motion for Preliminary Injunction as against the defendant Gus Brown, Justice of the Peace in and for Tarrant County, Texas.

The Court, after hearing the Motions read and the evidence and argument of Counsel, finds and concludes as follows:

It is ordered that the defendant Gus Brown, Justice of the Peace in and for Tarrant County, Texas be and he is hereby dismissed from said suit.

The Court finds that the defendant Dusty Rhodes, Sheriff, and Sully Montgomery, Constable of Tarrant County, Texas were performing the duties of their office imposed by the State Laws of Texas in executing any process or orders issued on said Judgments recovered during the interim period, and the Court concludes as a matter of comity said state officers should not be enjoined by this Court from the performance of their duties. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, of Tarrant County, Texas be and the same is hereby denied.

The Court finds that the defendant F. A. Bailey in connection with the eviction suit No. 11468 filed in Gus Brown's court against Jack Fletcher, that said defendant has complied with the Rent Regulation requirements as to grounds of eviction and notices necessary to evict a tenant, and the Court concludes that the said defendant should be dismissed from this suit and that no Preliminary Injunction shall issue against him. It is therefore ordered that the said F. A. Bailey be and he is hereby dismissed from this suit.

The Court finds that the defendant J. A. Shellberg in connection with the eviction suit No. 11479 against W. M. Manor, Jr. pending in Gus Brown's Court, that said defendant has complied with the Rent Regulation requirements as to the

grounds of eviction and notices necessary to evict a tenant and the Court concludes that said landlord should be dismissed from this suit, and that no Preliminary injunction shall issue against him. It is therefore ordered that the said J. A. Shellberg be and he is hereby dismissed from this suit.

The Court finds that the defendant J. C. Maloney in connection with the eviction suit No. 11487 against Mary Hemphill pending in Gus Brown's Court filed on July 25, 1946 was dismissed by the Plaintiff on August 6, 1946 and the tenant is still in possession, and the Court concludes that the question of issuing a Preliminary Injunction as to the said suit is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against J. C. Maloney be and the same is hereby denied.

The Court finds that the defendant Mrs. Anna Billings in connection with the eviction suit No. 11373 against Carlisle Garlitz that the Judgment recovered on July 30, 1946 was set aside and said suit dismissed, and the Court concludes that the question of issuing a Preliminary Injunction as against said defendant is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction as against Anna Billings be and the same is hereby denied.

The Court finds that the defendant Mrs. Sallie Morrow in connection with the eviction suit No.

11466 against Miss Merrell Burnam that the Plaintiff voluntarily dismissed said suit and started a new eviction suit in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction against the defendant Mrs. Sallie Morrow is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction as against Mrs. Sallie Morrow be and the same is hereby denied.

The Court finds that the defendant O. O. Black in connection with the eviction suit no. 11488 against James L. Bunnell, that said suit was dismissed and a new suit started in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction is moot. It is therefore ordered that the Complainant's MOtion for a Preliminary Injunction as against the defendant O. O. Black be and the same is hereby denied.

The Court finds that the defendant J. E. Brooks in connection with the eviction suit No. 11478 against O. W. Turmon, that the Plaintiff has dismissed this suit and a new suit has been filed in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction against said defendant is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction as against the defendant J. E. Brooks be and the same is hereby denied.

The Court finds that the defendant Mrs. Maude Gregory in connection with the eviction suit No. 11482 against C. T. Meroney, that the defendant had dismissed said suit on August 8, 1946, and the Court concludes that the question of a Preliminary Injunction against the defendant is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction against the defendant Mrs. Maude Gregory be and the same is hereby denied.

The Court finds that the defendants J. W. and Mrs. J. W. Hughes in connection with the eviction suit No. 11372, that a Judgment was recovered on July 12, 1946 for possession of said property; and the Court finds that the defendant Mrs. Frankie Mae Page in connection with the eviction suit No. 11439, that a Judgment was recovered on said suit July 23, 1946; and the Court finds in the eviction suit No. 11392 of *Mrs. Sophia Chandler* vs. *Nora Gorrell* that a Judgment was recovered in said suit July 15, 1946; and the parties agreed that a writ of restitution was not to issue before August 16, 1946; and the Court finds that in connection with the eviction suit No. 11406 of *Mrs. Sophia Chandler* vs. *Pattie Little* that a Judgment was recovered on July 17, 1946, and the parties agreed that a writ of restitution was not to issue before August 16, 1946, and the Court concludes that as to all of said above-mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent

Regulations for Housing are invalid, and the Court concludes that a Judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the State Laws of Texas should be respected, and that the Court will not issue an injunction. It is therefore ordered that the Complainant's MOtion for Preliminary Injunction against Mrs. Frankie Mae Page, J. W. and Mrs. J. W. Hughes, and Mrs. Sophia Chandler be and the same is hereby denied.

The Court finds that the defendant Walter J. Donnelly in connection with the eviction suit No. 11477 against W. P. Lindse, that said suit was filed July 16, 1946, and that on July 30, 1946, the said parties and their attorneys appeared in Court and agreed that an agreed Judgment should be entered in said suit for possession of the property on July 30, 1946, and the Writ of Restitution would be withheld for thirty days, and the Court concludes that said agreed Judgment entered by said parties after July 25, 1946, should be respected by this Court, and will, therefore, not be enjoined. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction against the defendant Walter J. Donnelly be and the same is hereby denied.

The Court finds that the defendant-landlords named below in connection with the eviction suits described below have filed said eviction suits during the interim period from July 1, 1946, to July 25, 1946, without complying with the Rent Regu-

lations as to the grounds of eviction and the required notices and had not recovered JUdgement in said suits on or before July 25, 1946, said landlords in suits being described as follows, and said suits being filed and pending in the Court of Gus Brown, Justice of the Peace of Tarrant County, Texas:

No. 11469—*R. M. Riley* vs. *Robert Ladd.*

No. 11470—*D. E. Barnhill* vs. *J. C. Nicholson.*

No. 11483—*Beatrice & Clyde Robertson* vs. *Lela Ward.*

No. 11467—*O. B. Wood* vs. *Paul Courtney.*

No. 11471—*Della French* vs. *B. N. Carrold.*

No. 11474—*C. W. Stover* vs. *Walton Parker.*

No. 11475—*Charles Bembrey* vs. *Leroy Williams.*

No. 11464—*Mrs. E. McCord* vs. *Jack Childress.*

No. 11480—*Mr. D. M. Hazelwood* vs. *R. M. Bartlett.*

No. 11481—*Mrs. Henrietta Woodward* vs. *Mrs. Lock Wicker.*

No. 11474—*P. H. Rice* vs. *M. F. Newman.*

No. 11485—*Ethel C. Cantley* vs. *Charlie Burns.*

No. 11489—*M. E. Dove* vs. *Carl Phillips.*

No. 11480—*A. E. Wolcott* vs. *P. Preston.*

No. 11486—*Sam Johnson* vs. *Jimmie Wright.*

And the Court concludes that the provisions of the Price Control Extension Act of 1946 and the Rent Regulations for Housing apply to all of said suits, and the landlords therein should be enjoined.

It is therefore ordered that the defendants R. M. Riley, D. E. Barnhill, Beatrice & Clyde Robertson, O. B. Wood, Della French, C. W. Stover, Charles Bembrey, Mrs. E. McCord, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, P. H. Rice, Ethel C. Cantley, M. E. Dove, A. E. Wolcott, and Sam Johnson, their agents, servants, employees, attorneys, and all persons in active concert or participation with them be and each of them are hereby enjoined and restrained from the further prosecution of said eviction suits described above and from evicting or attempting to evict the tenants therein named and set forth above in said suits and be restrained from further prosecution of said eviction suits and from issuing, executing and/or causing to be issued or executed a writ of restitution to evict any tenant in any of said above described suits.

Entered at Dallas, Texas, this 30th day of August, 1946.

(S) T. WHITFIELD DAVIDSON,
Judge.

Approved as to Form.

(S) W. S. MARGOWSKI.
H. S. LATTIMORE.
M. WARD BAILEY.
LLOYD E. PRICE.
E. L. GILBERT.
JOE F. ORR.
FRANK CRUMLEY.
FRANK R. GRAVES.
J. ELWOOD WINTERS.

2. Interpretation 6–VI, July 25, 1946.

OFFICE OF PRICE ADMINISTRATION

WASHINGTON 25, D. C., (32)

Memorandum

To: All Regional Rent Executives, Regional Rent Attorneys, Area Rent Directors and Area Rent Attorneys.

From: Robert A. Sauer, Acting Associate General Counsel for Rent.

Subject: Interpretation 6–VI—*Evictions Pending on July 25, 1946.*

The Emergency Price Control Act of 1942, as amended, on July 25, 1946, was extended by striking out "June 30, 1946" and substituting "June 30, 1947", as the expiration date of the Act. Section 18 provides that the provisions of the Act shall take effect as of June 30, 1946. In this section a savings clause was inserted for the protection of persons who had acted contrary to the regulation during the interim period between June 30, 1946, and July 25, 1946. This savings clause provides that no act or transaction occurring between said dates shall be deemed a violation. As a result any eviction which occurred during the interim period was not a violation of the Act or regulation. By reason of this the tenant who has been in fact evicted during this interim period received no protection. If, however, he is in possession on July 25, 1946, he is entitled to the pro-

tection of the eviction provisions of the regulation and it is a violation of the regulation for the landlord on or after that date to attempt to evict by court process or otherwise except in accordance with the provisions of Section 6 of the regulation.

ILLUSTRATIONS

1. L had no ground under the regulation for eviction. On July 1, L instituted an eviction suit in the local court, obtained final judgment and writ of possession and obtained T's eviction prior to July 25, 1946. Even though L's action was contrary to Section 6 of the rent regulation, it is provided in the Act that his eviction of T shall not be deemed a violation, and the eviction is valid.

2. L is a veteran who owned the housing accommodations prior to October 20, 1942, and who sought in good faith immediate possession of the premises as a dwelling for himself. L complied with Section 6 of the regulation and obtained final judgment on July 15, 1946. However, T was still in possession on July 25, 1946. Since L has complied with the regulation, his eviction of T by utilizing the processes of the court under the judgment obtained is not a violation.

3. L had no ground for eviction under the regulation and did not comply with the notice requirements of Section 6 (d). L instituted suit on July 1, 1946, and obtained judgment for eviction

on July 15, 1946, under the local law, but T was still in possession, on July 25, 1946. Even though L's act in instituting suit and obtaining judgment is not a violation of the regulation by reason of the savings clause in the Act it is nevertheless a violation of the regulation for L after July 25, 1946, to attempt to evict T by the utilization of court processes or otherwise except in accordance with the regulation. This is true even though L has obtained final judgment for eviction in the local court. It would be a violation for L to attempt T's eviction by utilizing an execution or writ of possession which had been stayed by the court until after July 25, 1946, or for L to attempt to evict T through an execution or writ of possession which had been issued before said date but not in fact executed.

4. L obtained a cerificate relating to eviction under Section 6 (b) (2) effective six months from June 1, 1946. On July 1, 1946, L instituted an eviction action and obtained judgment on July 15, 1946, but T was still in possession on July 25, 1946. Although L's action in instituting suit was not a violation by reason of the savings clause in the Act, any attempt by L to evict T on or after July 25, 1946, by the utilization of court processes or otherwise is a violation of the regulation. L can, of course, proceed to evict under local law at the expiration of six months from June 1, 1946.

(Issued July 25, 1946.)

U. S. GOVERNMENT PRINTING OFFICE: 1946